February 6, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
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Subject: Docket No. R-1170, (Regulation M: Consumer Leasing); Docket No. R-1169 (Regulation E: Electronic Funds Transfers); Docket No. R-1168 (Regulation: Equal Credit Opportunity); Docket No. R-1167 (Regulation Z: Truth in Lending) and Docket No. R-1171 (Regulation DD: Truth in Savings)

Dear Ms. Johnson:

On behalf of the 220 commercial, savings, cooperative banks and federal savings institution members of the Massachusetts Bankers Association located throughout Massachusetts and New England, we appreciate the opportunity to comment on the five Notices of Proposed Rulemaking (NPR) issued by the Board of Governors of the Federal Reserve System (the "Board") to amend consumer protection regulations: B (Equal Credit Opportunity Act); E (Electronic Fund Transfers); M (Consumer Leasing); Z (Truth in Lending); and DD (Truth in Savings) and their corresponding commentaries. The proposed amendments would define more specifically the standard for providing "clear and conspicuous" disclosures by adopting rules that essentially mirror the provisions of Regulation P, Privacy and Consumer Financial Information.

The Board explains that its purpose is two-fold: 1) to facilitate compliance by institutions by creating consistency and 2) to ensure that consumers receive noticeable and understandable information. However, the Board does not offer any evidence that the current disclosures are not satisfactory.

The proposal as written requires consumer disclosure to meet the following definitions of *reasonably understandable*. Examples of disclosures that are reasonably understandable include disclosures that:

- Present the information in the disclosure in clear and concise sentences, paragraphs, and sections.
- Use short explanatory sentences or bullet lists whenever possible.
- Use definite, concrete, everyday words and active voice whenever possible.
- Avoid multiple negatives.
- Avoid legal and highly technical business terminology whenever possible.
- Avoid explanations that are imprecise and readily subject to different interpretations.

- *Designed to call attention*. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

    - Use a plain-language heading to call attention to the disclosure.

    - Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard.

    - Provide wide margins and ample line spacing.

    - Use boldface or italics for key words.

According to the definitions above, the proposal defines clear and conspicuous to mean that a disclosure is "reasonably understandable and designed to call attention to the nature and significance of the information in the disclosures." In an effort to provide more specific understandable disclosures to consumers and consistency for banks, the Board's proposal will increase the level of uncertainty and subjectivity for financial institutions in developing new disclosures. Since the requirements will be imprecise, there is widespread concern that the disclosures will invite lawsuits and/or compliance violations based on subjective interpretations of what is "understandable."

In our review of the proposal, we have determined that the Board should withdraw its proposal based on the several problems that we have identified. We also do not believe that consistency among regulations would facilitate compliance by institutions. Our concerns are outlined as follows:

The proposals will impose an extraordinary cost on the industry.

Under the proposal, banks will have to review every disclosure required under Regulations B, E, M, Z, and DD to determine whether existing forms meet the new standards. In most cases they would have to be revised and reprinted costing the industry billions of dollars. The requirements related to font size, margin size, headings, and bullets will drastically increase the length of the disclosures, adding printing and posting costs and increasing the likelihood that consumers will not read them.

The proposals will not be helpful to consumers.

The Board has not provided evidence that the current disclosures have caused confusion or problems among consumers. The current standards have been in place for a number of years, and we have not heard that there have been any concerns expressed under these standards. The real problem seems to be that consumers in general do not want to take the time to read disclosures. No regulatory change can address this issue. As previously mentioned, the requirements will lengthen the disclosures to adhere to the new requirements. As a result, consumers may be *less*-- not more inclined to read disclosures.

Regulation P model is an inappropriate model disclosure and the proposed standard could expose financial institutions to expensive lawsuits.

Regulation P is an example of how carefully crafted disclosures can still be difficult to understand by consumers. Responding to the heavy criticism of the privacy disclosure notices by consumer groups,

the federal regulators issued a joint proposal seeking comment on several short form privacy notices. The proposal requests comments on how to improve the disclosures so that they are more easily understood and useful to consumers. We believe that the Board should not consider amending disclosures required by other consumer protection regulations to be consistent with Regulation P because it would increase the risk of civil liability to financial institutions because of the strict liability standards that exist. Under regulation DD for example, financial institutions face strict liability for failure to comply with "clear and conspicuous" disclosure standards. As a result, institutions would be exposed to a significant risk of liability and could be required to pay "statutory damages" even if the disclosures themselves are completely accurate and the consumer is not harmed.

The proposals will increase regulatory compliance burden on institutions.

At a time when banking regulators are reviewing rules to reduce regulatory burden as required by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA"), the Board's proposal would unnecessarily counter these efforts. Bank CEOs constantly express to Association staff and their respective regulators that the regulatory burden is a growing concern in terms of costs and in terms of the financial and human resources it consumes. Small community banks are particularly overwhelmed by the barrage of new regulations in recent years (i.e. Patriot Act, Check 21 and Fact Act etc.).

Under the EGRPRA review, the Association is planning to submit comments on a separate interagency proposal on how to reduce the regulatory burden imposed by the consumer protection rules including three of the five regulations for which the Board is proposing to amend the disclosures. We believe that in light of these efforts, the proposal is premature.

Closing.

We believe that the Board's proposal while well intended, would not meet its stated goals and would challenge efforts already underway to decrease regulatory burden for banks. In addition, we do not believe that the benefits of the proposal justify the costs to financial institutions. Therefore, we urge the Board to abandon this proposal.

Thank you for taking the time to review the Association's comments.

Sincerely,

Tanya M. Duncan
Director of Housing and Federal Policy

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